

HOUSE BILL 919

E1, E2

11r1695
CF SB 801

By: Delegates Hough, Alston, Anderson, Bates, Carter, Clippinger, Cluster, Dwyer, Eckardt, George, Haddaway-Riccio, Lee, McComas, McDermott, Mitchell, Ready, B. Robinson, Rosenberg, Simmons, Valderrama, Valentino-Smith, Waldstreicher, and Wood

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2011

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Swift and Certain Sanctions Pilot Program**

3 FOR the purpose of ~~declaring that it is the public policy of the State that certain~~
4 ~~former inmates under community supervision shall be subject to certain~~
5 ~~revocation proceedings, possible incarceration, and certain other sanctions~~
6 ~~under certain circumstances; requiring the Division of Parole and Probation to~~
7 ~~implement a pilot program involving a system of graduated sanctions for~~
8 ~~violations of conditions of community supervision; requiring a certain system to~~
9 ~~set forth a menu of certain presumptive sanctions; requiring certain sanctions~~
10 ~~to take into account certain factors; requiring a certain system to define certain~~
11 ~~positive reinforcements; requiring the Secretary of Public Safety and~~
12 ~~Correctional Services to establish certain review processes by regulation;~~
13 ~~requiring a certain review to be conducted by a certain employee or~~
14 ~~representative; requiring a certain court to determine the conditions of~~
15 ~~community supervision for certain individuals; authorizing a certain court to~~
16 ~~impose as a condition of community supervision that the Division may impose~~
17 ~~certain graduated sanctions for certain violations; authorizing the Division to~~
18 ~~modify the conditions of community supervision for a certain purpose and place~~
19 ~~a certain supervised individual in a certain facility or center for a certain period~~
20 ~~of time under certain circumstances; requiring a certain supervision officer who~~
21 ~~intends to modify the conditions of community supervision in a certain manner~~
22 ~~to issue to a certain supervised individual a certain notice; requiring the~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~imposition of a graduated sanction by a certain supervision officer to comport with a certain system of graduated sanctions; requiring a certain supervised individual to immediately accept or object to a certain sanction at a certain time; providing that the failure of a certain supervised individual to comply with a certain sanction shall constitute a violation of probation, parole, or mandatory supervision; providing that if a certain supervised individual objects to the imposition of a certain sanction, the individual is entitled to a certain administrative review; establishing that if the Division affirms a certain recommendation, then a certain sanction shall become effective immediately; requiring a certain confinement to be approved by a certain chief supervision officer; allowing a certain supervised individual to be taken into custody for a certain maximum period of time while certain approval is obtained; requiring a certain supervision officer to impose a certain sanction on certain days and times under certain circumstances; prohibiting a certain sanction from being imposed except by order of the court; prohibiting the issuance of a certain notice that could result in a certain felony charge, with a certain exception; prohibiting a court from revoking the term of community supervision or imposing additional sanctions upon successful completion of a graduated sanction; requiring a certain supervision officer to take certain actions if the supervision officer modifies the conditions of community supervision in a certain manner; requiring a certain chief supervision officer periodically to review confinement sanctions recommended by supervision officers for certain purposes; defining certain terms; making the provisions of this Act severable; requiring the Department of Public Safety and Correctional Services to develop by a certain date a certain pilot program in two counties that creates a system of graduated administrative sanctions for violations of conditions of parole by releasees from the Division of Correction; requiring the Department to make a certain annual report to the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Swift and Certain Sanctions Pilot Program.~~

31 ~~BY adding to~~

32 ~~Article — Correctional Services~~

33 ~~Section 6-301 through 6-306 to be under the new subtitle “Subtitle 3. Swift and~~
 34 ~~Certain Sanctions Pilot Program”~~

35 ~~Annotated Code of Maryland~~

36 ~~(2008 Replacement Volume and 2010 Supplement)~~

37 ~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
 38 ~~MARYLAND, That the Laws of Maryland read as follows:~~

39 ~~Article — Correctional Services~~

40 ~~SUBTITLE 3. SWIFT AND CERTAIN SANCTIONS PILOT PROGRAM.~~

41 ~~6-301.~~

1 ~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
2 ~~INDICATED.~~

3 ~~(B) "CHIEF SUPERVISION OFFICER" MEANS THE HIGHEST RANKING~~
4 ~~FIELD PAROLE AND PROBATION ADMINISTRATOR IN EACH JUDICIAL CIRCUIT.~~

5 ~~(C) "COMMUNITY SUPERVISION" MEANS:~~

6 ~~(1) THE PLACEMENT OF AN INDIVIDUAL UNDER THE~~
7 ~~SUPERVISION OF THE DIVISION, WITH CONDITIONS IMPOSED BY A COURT FOR A~~
8 ~~SPECIFIED PERIOD DURING WHICH:~~

9 ~~(I) CRIMINAL PROCEEDINGS ARE DEFERRED WITHOUT AN~~
10 ~~ADJUDICATION OF GUILT; AND~~

11 ~~(II) A SENTENCE OF IMPRISONMENT OR CONFINEMENT,~~
12 ~~IMPRISONMENT AND FINE, OR CONFINEMENT AND FINE IS PROBATED AND THE~~
13 ~~IMPOSITION OF SENTENCE IS SUSPENDED IN WHOLE OR IN PART; OR~~

14 ~~(2) THE PLACEMENT OF AN INDIVIDUAL UNDER SUPERVISION~~
15 ~~AFTER RELEASE FROM PRISON OR JAIL, WITH CONDITIONS IMPOSED BY THE~~
16 ~~DIVISION FOR A SPECIFIED PERIOD.~~

17 ~~(D) "GRADUATED SANCTION" MEANS NONPRISON OFFENDER~~
18 ~~ACCOUNTABILITY MEASURES AND PROGRAMS, INCLUDING:~~

19 ~~(1) ELECTRONIC SUPERVISION TOOLS;~~

20 ~~(2) DRUG AND ALCOHOL TESTING OR MONITORING;~~

21 ~~(3) DAY OR EVENING REPORTING CENTERS;~~

22 ~~(4) RESTITUTION CENTERS;~~

23 ~~(5) FORFEITURE OF EARNED COMPLIANCE CREDITS;~~

24 ~~(6) REHABILITATIVE INTERVENTIONS SUCH AS SUBSTANCE~~
25 ~~ABUSE OR MENTAL HEALTH TREATMENT;~~

26 ~~(7) REPORTING REQUIREMENTS TO SUPERVISION OFFICERS;~~

27 ~~(8) COMMUNITY SERVICE OR WORK CREWS;~~

28 ~~(9) SECURE OR UNSECURE RESIDENTIAL TREATMENT FACILITIES~~
29 ~~OR HALFWAY HOUSES; AND~~

1 ~~(10) SHORT TERM OR INTERMITTENT INCARCERATION.~~

2 ~~(E) "POSITIVE REINFORCEMENT" MEANS REWARDS AND INCENTIVES,~~
3 ~~INCLUDING:~~

4 ~~(1) AWARDING CERTIFICATES OF ACHIEVEMENT;~~

5 ~~(2) REDUCING REPORTING REQUIREMENTS;~~

6 ~~(3) DEFERRING A MONTHLY SUPERVISION FEE PAYMENT;~~

7 ~~(4) AWARDING EARNED COMPLIANCE CREDITS;~~

8 ~~(5) REMOVING SUPERVISION CONDITIONS SUCH AS HOME~~
9 ~~DETENTION OR CURFEW; OR~~

10 ~~(6) ASSIGNING THE OFFENDER TO BE A MENTOR TO OTHERS.~~

11 ~~(F) "SUPERVISED INDIVIDUAL" MEANS AN INDIVIDUAL UNDER~~
12 ~~COMMUNITY SUPERVISION.~~

13 ~~(G) "SUPERVISION OFFICER" MEANS A PERSON APPOINTED OR~~
14 ~~EMPLOYED BY THE DIVISION TO SUPERVISE INDIVIDUALS PLACED ON~~
15 ~~COMMUNITY SUPERVISION.~~

16 ~~6-302.~~

17 ~~IT IS THE PUBLIC POLICY OF THE STATE THAT SUPERVISED INDIVIDUALS~~
18 ~~SHALL BE SUBJECT TO:~~

19 ~~(1) PROCEEDINGS FOR THE REVOCATION OF COMMUNITY~~
20 ~~SUPERVISION AND THE POSSIBLE REINSTATEMENT OF INCARCERATION FOR~~
21 ~~FAILURE TO COMPLY WITH THE CONDITIONS OF COMMUNITY SUPERVISION~~
22 ~~WHEN THE FAILURE CONSTITUTES A SIGNIFICANT RISK TO PRIOR VICTIMS OF~~
23 ~~THE SUPERVISED INDIVIDUAL OR THE COMMUNITY AT LARGE AND CANNOT BE~~
24 ~~APPROPRIATELY MANAGED IN THE COMMUNITY; OR~~

25 ~~(2) SANCTIONS OTHER THAN REVOCATION AND INCARCERATION~~
26 ~~AS APPROPRIATE TO:~~

27 ~~(I) THE SEVERITY OF THE VIOLATION BEHAVIOR;~~

28 ~~(II) THE RISK OF FUTURE CRIMINAL BEHAVIOR BY THE~~
29 ~~OFFENDER; AND~~

1 ~~(III) THE NEED FOR, AND AVAILABILITY OF, INTERVENTIONS~~
2 ~~THAT MAY ASSIST THE OFFENDER TO REMAIN COMPLIANT AND CRIME-FREE IN~~
3 ~~THE COMMUNITY.~~

4 ~~6-303.~~

5 ~~(A) ON OR BEFORE JANUARY 1, 2012, THE DIVISION SHALL IMPLEMENT~~
6 ~~A PILOT PROGRAM INVOLVING A SYSTEM OF GRADUATED SANCTIONS FOR~~
7 ~~VIOLATIONS OF CONDITIONS OF COMMUNITY SUPERVISION.~~

8 ~~(B) THE SYSTEM SHALL SET FORTH A LIST OF PRESUMPTIVE~~
9 ~~SANCTIONS FOR SUPERVISION VIOLATIONS, INCLUDING:~~

10 ~~(1) FAILURE TO REPORT;~~

11 ~~(2) FAILURE TO PAY FINES, FEES, AND RESTITUTION;~~

12 ~~(3) FAILURE TO PARTICIPATE IN A REQUIRED PROGRAM OR~~
13 ~~SERVICE;~~

14 ~~(4) FAILURE TO COMPLETE COMMUNITY SERVICE;~~

15 ~~(5) VIOLATION OF A PROTECTIVE ORDER OR PEACE ORDER; AND~~

16 ~~(6) FAILURE TO REFRAIN FROM THE USE OF ALCOHOL OR~~
17 ~~CONTROLLED DANGEROUS SUBSTANCES.~~

18 ~~(C) THE TYPE OF SANCTIONS PRESCRIBED SHALL TAKE INTO ACCOUNT~~
19 ~~FACTORS SUCH AS:~~

20 ~~(1) THE SEVERITY OF THE VIOLATION;~~

21 ~~(2) THE SUPERVISED INDIVIDUAL'S PREVIOUS CRIMINAL~~
22 ~~RECORD;~~

23 ~~(3) THE NUMBER AND SEVERITY OF ANY PREVIOUS SUPERVISION~~
24 ~~VIOLATIONS;~~

25 ~~(4) THE SUPERVISED INDIVIDUAL'S ASSESSED RISK LEVEL; AND~~

26 ~~(5) THE EXTENT TO WHICH GRADUATED SANCTIONS WERE~~
27 ~~IMPOSED FOR PREVIOUS VIOLATIONS.~~

1 ~~(D) THE SYSTEM SHALL DEFINE POSITIVE REINFORCEMENTS THAT~~
2 ~~SUPERVISED INDIVIDUALS SHALL RECEIVE FOR COMPLIANCE WITH CONDITIONS~~
3 ~~OF SUPERVISION.~~

4 ~~(E) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN~~
5 ~~ADMINISTRATIVE PROCESS TO REVIEW AND APPROVE OR REJECT, PRIOR TO~~
6 ~~IMPOSITION, GRADUATED SANCTIONS THAT DEVIATE FROM THOSE~~
7 ~~PRESCRIBED.~~

8 ~~(F) (1) THE SECRETARY SHALL ESTABLISH, BY REGULATION, AN~~
9 ~~ADMINISTRATIVE PROCESS TO REVIEW GRADUATED SANCTIONS CONTESTED BY~~
10 ~~SUPERVISED INDIVIDUALS UNDER § 6-305 OF THIS SUBTITLE.~~

11 ~~(2) THE REVIEW SHALL BE CONDUCTED BY AN IMPARTIAL~~
12 ~~DIVISION EMPLOYEE OR REPRESENTATIVE WHO HAS BEEN SELECTED,~~
13 ~~APPOINTED, AND TRAINED TO HEAR CASES REGARDING GRADUATED SANCTIONS~~
14 ~~FOR VIOLATIONS OF SUPERVISION CONDITIONS.~~

15 ~~6-304.~~

16 ~~FOR INDIVIDUALS PLACED ON PROBATION, THE COURT HAVING~~
17 ~~JURISDICTION OF THE CASE:~~

18 ~~(1) SHALL DETERMINE THE CONDITIONS OF COMMUNITY~~
19 ~~SUPERVISION; AND~~

20 ~~(2) MAY IMPOSE AS A CONDITION OF COMMUNITY SUPERVISION~~
21 ~~THAT THE DIVISION, IN ACCORDANCE WITH § 6-305 OF THIS SUBTITLE, MAY~~
22 ~~IMPOSE GRADUATED SANCTIONS ADOPTED BY THE DIVISION FOR VIOLATIONS~~
23 ~~OF THE CONDITIONS OF COMMUNITY SUPERVISION.~~

24 ~~6-305.~~

25 ~~(A) NOTWITHSTANDING ANY LAW OR RULE TO THE CONTRARY, THE~~
26 ~~DIVISION MAY:~~

27 ~~(1) MODIFY THE CONDITIONS OF COMMUNITY SUPERVISION FOR~~
28 ~~THE LIMITED PURPOSE OF IMPOSING GRADUATED SANCTIONS; AND~~

29 ~~(2) PLACE A SUPERVISED INDIVIDUAL WHO VIOLATES THE~~
30 ~~CONDITIONS OF COMMUNITY SUPERVISION IN A STATE OR LOCAL~~
31 ~~CORRECTIONAL FACILITY OR RESIDENTIAL CENTER FOR A PERIOD OF NOT~~
32 ~~MORE THAN 5 CONSECUTIVE DAYS, AND NOT MORE THAN 30 DAYS IN ANY ONE~~
33 ~~CALENDAR YEAR.~~

1 ~~(B) A SUPERVISION OFFICER WHO INTENDS TO MODIFY THE~~
2 ~~CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED~~
3 ~~SANCTION SHALL ISSUE TO THE SUPERVISED INDIVIDUAL A NOTICE OF THE~~
4 ~~INTENDED SANCTION THAT SHALL INFORM THE SUPERVISED INDIVIDUAL OF:~~

5 ~~(1) THE TECHNICAL VIOLATION ALLEGED;~~

6 ~~(2) THE DATE OF THE VIOLATION; AND~~

7 ~~(3) THE GRADUATED SANCTION TO BE IMPOSED.~~

8 ~~(C) (1) THE IMPOSITION OF A GRADUATED SANCTION BY A~~
9 ~~SUPERVISION OFFICER MUST COMPORT WITH THE SYSTEM OF GRADUATED~~
10 ~~SANCTIONS ADOPTED BY THE DIVISION UNDER § 6-303 OF THIS SUBTITLE.~~

11 ~~(2) UPON RECEIPT OF THE NOTICE OF INTENDED SANCTION, THE~~
12 ~~SUPERVISED INDIVIDUAL SHALL IMMEDIATELY ACCEPT OR OBJECT TO THE~~
13 ~~SANCTION PROPOSED BY THE SUPERVISION OFFICER.~~

14 ~~(3) THE FAILURE OF THE SUPERVISED INDIVIDUAL TO COMPLY~~
15 ~~WITH A SANCTION SHALL CONSTITUTE A VIOLATION OF PROBATION, PAROLE,~~
16 ~~OR MANDATORY SUPERVISION.~~

17 ~~(4) IF THE SUPERVISED INDIVIDUAL OBJECTS TO THE~~
18 ~~IMPOSITION OF THE SANCTION, THE INDIVIDUAL IS ENTITLED TO AN~~
19 ~~ADMINISTRATIVE REVIEW TO BE CONDUCTED BY THE DIVISION WITHIN 5 DAYS~~
20 ~~OF THE ISSUANCE OF THE NOTICE.~~

21 ~~(5) IF THE DIVISION AFFIRMS THE RECOMMENDATION~~
22 ~~CONTAINED IN THE NOTICE, THE SANCTION SHALL BECOME EFFECTIVE~~
23 ~~IMMEDIATELY.~~

24 ~~(D) (1) IF THE GRADUATED SANCTION INVOLVES CONFINEMENT IN A~~
25 ~~CORRECTIONAL OR DETENTION FACILITY, CONFINEMENT MUST BE APPROVED~~
26 ~~BY THE CHIEF SUPERVISION OFFICER, BUT THE SUPERVISED INDIVIDUAL MAY~~
27 ~~BE TAKEN INTO CUSTODY FOR UP TO 4 HOURS WHILE THE APPROVAL IS~~
28 ~~OBTAINED.~~

29 ~~(2) IF THE SUPERVISED INDIVIDUAL IS EMPLOYED, THE~~
30 ~~SUPERVISION OFFICER, TO THE EXTENT FEASIBLE, SHALL IMPOSE THE~~
31 ~~SANCTION UNDER PARAGRAPH (1) OF THIS SUBSECTION ON WEEKEND DAYS OR~~
32 ~~OTHER DAYS AND TIMES WHEN THE SUPERVISED INDIVIDUAL IS NOT WORKING.~~

~~(E) A SANCTION THAT CONFINES A SUPERVISED INDIVIDUAL IN A CORRECTIONAL FACILITY FOR A PERIOD OF MORE THAN 5 CONSECUTIVE DAYS, OR EXTENDS THE TERM OF COMMUNITY SUPERVISION, MAY NOT BE IMPOSED AS A GRADUATED SANCTION, EXCEPT BY ORDER OF THE COURT.~~

~~(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A NOTICE OF A GRADUATED SANCTION MAY NOT BE ISSUED FOR ANY VIOLATION OF PROBATION, PAROLE, OR POSTRELEASE SUPERVISION THAT COULD RESULT IN AN ADDITIONAL, SEPARATE FELONY CHARGE.~~

~~(2) A NOTICE OF A GRADUATED SANCTION MAY BE ISSUED FOR A POSITIVE DRUG TEST.~~

~~(G) ON SUCCESSFUL COMPLETION OF A GRADUATED SANCTION, A COURT MAY NOT REVOKE THE TERM OF COMMUNITY SUPERVISION OR IMPOSE ADDITIONAL SANCTIONS FOR THE SAME VIOLATION.~~

~~(H) IF A SUPERVISION OFFICER MODIFIES THE CONDITIONS OF COMMUNITY SUPERVISION BY IMPOSING A GRADUATED SANCTION, THE OFFICER SHALL:~~

~~(1) DELIVER A COPY OF THE MODIFIED CONDITIONS TO THE SUPERVISED INDIVIDUAL;~~

~~(2) FILE A COPY OF THE MODIFIED CONDITIONS WITH THE SENTENCING COURT OR RELEASING AUTHORITY; AND~~

~~(3) NOTE THE DATE OF DELIVERY OF THE COPY IN THE SUPERVISED INDIVIDUAL'S FILE.~~

~~6-306.~~

~~THE CHIEF SUPERVISION OFFICER SHALL REVIEW CONFINEMENT SANCTIONS RECOMMENDED BY SUPERVISION OFFICERS ON A QUARTERLY BASIS TO:~~

~~(1) ASSESS ANY DISPARITIES THAT MAY EXIST AMONG OFFICERS;~~

~~(2) EVALUATE THE EFFECTIVENESS OF THE SANCTION AS MEASURED BY THE SUPERVISED INDIVIDUALS' SUBSEQUENT CONDUCT; AND~~

~~(3) MONITOR THE IMPACT ON THE DIVISION'S NUMBER AND TYPE OF REVOCATIONS FOR VIOLATIONS OF THE CONDITIONS OF SUPERVISION.~~

1 ~~SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this~~
 2 ~~Act or the application thereof to any person or circumstance is held invalid for any~~
 3 ~~reason in a court of competent jurisdiction, the invalidity does not affect other~~
 4 ~~provisions or any other application of this Act which can be given effect without the~~
 5 ~~invalid provision or application, and for this purpose the provisions of this Act are~~
 6 ~~declared severable.~~

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 8 MARYLAND, That the Department of Public Safety and Correctional Services shall:

9 (1) develop, by October 1, 2012, a pilot program in two counties that
 10 creates a system of graduated administrative sanctions for violations of conditions of
 11 parole by releasees from the Division of Correction; and

12 (2) beginning in 2013, on or before October 1 of each year, report to the
 13 General Assembly, in accordance with § 2-1246 of the State Government Article, on:

14 (i) the status of the pilot program;

15 (ii) the percentage of Departmental programs that use
 16 evidence-based practices; and

17 (iii) the number of individuals incarcerated for technical
 18 violations in the State while on parole and the number of new offenses committed by
 19 individuals in the State while on parole.

20 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take~~
 21 ~~effect October 1, 2011. It shall remain effective for a period of 4 years and, at the end~~
 22 ~~of September 30, 2015, with no further action required by the General Assembly, this~~
 23 ~~Act shall be abrogated and of no further force and effect.~~

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.